

1 HANSON BRIDGETT LLP
PATRICK GLENN- 141604
2 pglenn@hansonbridgett.com
KEVIN REESE - 172992
3 kreese@hansonbridgett.com
JAHMAL T. DAVIS - 191504
4 jdavis@hansonbridgett.com
425 Market Street, 26th Floor
5 San Francisco, CA 94105
Telephone: (415) 777-3200
6 Facsimile: (415) 541-9366

7 Attorneys for Defendants
8 AMERICA WEST AIRLINES, INC. and U.S. AIRWAYS,
INC.

9 **UNITES STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 CLARISE JOY STEMLEY,
13 Plaintiff,

14 v.

15 AMERICA WEST AIRLINES, INC.; US
16 AIRWAYS, INC.; and DOES 1
THROUGH 25,

17 Defendant.

No. C08-02040 EMC

**DEFENDANTS' ANSWER TO VERIFIED
COMPLAINT**

Action Filed: February 14, 2008

18
19
20 Defendants America West Airlines, Inc. and US Airways, Inc., (collectively
21 "Defendants") answer the verified Complaint filed by Plaintiff Clarise Joy Stemley
22 ("Plaintiff") on February 14, 2008 as follows:

23 1. Answering Paragraph No. 1, Defendants admit that Plaintiff is a former
24 employee of America West Airlines, Inc. which merged with US Airways, Inc. on
25 September 27, 2005. Except as so expressly admitted, Defendants deny the remainder
26 of the material allegations contained therein.

27 ///

28 ///

1 2. Answering Paragraph No. 2, Defendants admit that America West Airlines,
2 Inc. merged with US Airways, Inc. on September 27, 2005. Defendants further admit
3 that US Airways, Inc. is a Delaware corporation and is authorized to conduct business in
4 the State of California. Defendants admit that America West Airlines is a registered
5 corporation with the State of Delaware with its principal place of business in Arizona.
6 Except as so expressly admitted, Defendants deny the remainder of the material
7 allegations contained therein.

8 3. Answering Paragraph No. 3, Defendants admit that US Airways, Inc. is a
9 Delaware corporation and is authorized to conduct business in the State of California
10 with its principal place of business in Arizona. Except as so expressly admitted,
11 Defendants deny the remainder of the material allegations contained therein.

12 4. Defendants lack sufficient information to form a belief as to the truth of the
13 material allegations contained therein, and on that basis deny them.

14 5. Answering Paragraph No. 5, Defendants deny the material allegations
15 contained therein.

16 6. Answering Paragraph No. 6, Defendants admit that Plaintiff began working
17 for America West Airlines, Inc. as a part-time Customer Service Representative. Except
18 as so expressly admitted, Defendants deny the remainder of the material allegations
19 therein.

20 7. Answering Paragraph No. 7, Defendants deny the material allegations
21 therein.

22 8. Answering Paragraph No. 8, Defendants deny the material allegations
23 therein.

24 9. Answering Paragraph No. 9, Defendants deny engaging in any conduct or
25 activity in violation of the law. Defendants further deny that Plaintiff has suffered any
26 harm or damage whatsoever as a result of any conduct by, or attributable to these
27 Defendants.

28 ///

1 10. Answering Paragraph No. 10, Defendants incorporate by reference all of
2 their responses to the allegations of Paragraphs 1 through 9, inclusive, as though set
3 forth fully herein.

4 11. Answering Paragraph No. 11, Defendants lack sufficient information to
5 form a belief as to the truth of the material allegations contained therein, and on that
6 basis deny them.

7 12. Answering Paragraph No. 12, Defendants lack sufficient information to
8 form a belief as to the truth of the material allegations contained therein, and on that
9 basis deny them.

10 13. Answering Paragraph No. 13, Defendants deny the material allegations
11 therein.

12 14. Answering Paragraph No. 14, Defendants deny the material allegations
13 therein.

14 15. Answering Paragraph No. 15, Defendants deny the material allegations
15 therein. Defendants deny engaging in any conduct or activity in violation of the law.
16 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
17 result of any conduct by, or attributable to these Defendants.

18 16. Answering Paragraph No. 16, Defendants deny the material allegations
19 therein. Defendants deny engaging in any conduct or activity in violation of the law.
20 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
21 result of any conduct by, or attributable to these Defendants.

22 17. Answering Paragraph No. 17, Defendants deny the material allegations
23 therein. Defendants deny engaging in any conduct or activity in violation of the law.
24 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
25 result of any conduct by, or attributable to these Defendants.

26 ///

27 ///

28 ///

1 18. Answering Paragraph No. 18, Defendants admit that they were notified and
2 advised that Plaintiff had filed a charge with the California Department of Fair
3 Employment and Housing. Defendants admit that the DFEH issued a notice of case
4 closure and a right to sue notice on February 14, 2007 as the DFEH was unable to
5 conclude any violation of a statute. Except as so expressly admitted, Defendants deny
6 the remainder of the material allegations therein.

7 19. Answering Paragraph No.19, Defendants incorporate by reference all of
8 their responses to the allegations of Paragraphs 1 through 18 inclusive, as though set
9 forth fully herein.

10 20. Answering Paragraph No. 20, Defendants lack sufficient information to
11 form a belief as to the truth of the material allegations contained therein, and on that
12 basis deny them.

13 21. Answering Paragraph No. 21, Defendants lack sufficient information to
14 form a belief as to the truth of the material allegations contained therein, and on that
15 basis deny them.

16 22. Answering Paragraph No. 22, Defendants deny the material allegations
17 therein.

18 23. Answering Paragraph No. 23, Defendants deny the material allegations
19 therein.

20 24. Answering Paragraph No. 24, Defendants deny the material allegations
21 therein.

22 25. Answering Paragraph No. 25, Defendants deny the material allegations
23 therein. Defendants deny engaging in any conduct or activity in violation of the law.
24 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
25 result of any conduct by, or attributable to these Defendants.

26 ///

27 ///

28 ///

1 26. Answering Paragraph No. 26, Defendants deny the material allegations
2 therein. Defendants deny engaging in any conduct or activity in violation of the law.
3 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
4 result of any conduct by, or attributable to these Defendants.

5 27. Answering Paragraph No. 27, Defendants deny the material allegations
6 therein. Defendants deny engaging in any conduct or activity in violation of the law.
7 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
8 result of any conduct by, or attributable to these Defendants.

9 28. Answering Paragraph No. 28, Defendants admit that they were notified and
10 advised that Plaintiff had filed a charge with the California Department of Fair
11 Employment and Housing. Defendants admit that the DFEH issued a notice of case
12 closure and a right to sue notice on February 14, 2007 as the DFEH was unable to
13 conclude any violation of a statute. Except as so expressly admitted, Defendants deny
14 the remainder of the material allegations therein.

15 29. Answering Paragraph No. 29, Defendants incorporate by reference all of
16 their responses to the allegations of Paragraphs 1 through 28, inclusive, as though set
17 forth fully herein.

18 30. Answering Paragraph No. 30, Defendants lack sufficient information to
19 form a belief as to the truth of the material allegations contained therein, and on that
20 basis deny them.

21 31. Answering Paragraph No. 31, Defendants admit that Plaintiff began
22 working for America West Airlines, Inc. in March 2005 as a part-time Customer Service
23 Representative. Except as so expressly admitted, Defendants deny the material
24 allegations therein.

25 32. Answering Paragraph No. 32, Defendants admit that Plaintiff sought leave
26 from work in 2005. Except as so expressly admitted, Defendants deny the material
27 allegations contained therein.

28 ///

1 33. Answering Paragraph No. 33, Defendants deny the material allegations
2 therein. Defendants deny engaging in any conduct or activity in violation of the law.
3 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
4 result of any conduct by, or attributable to these Defendants.

5 34. Answering Paragraph No. 34, Defendants deny the material allegations
6 therein. Defendants deny engaging in any conduct or activity in violation of the law.
7 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
8 result of any conduct by, or attributable to these Defendants.

9 35. Answering Paragraph No. 35, Defendants deny the material allegations
10 therein. Defendants deny engaging in any conduct or activity in violation of the law.
11 Defendants further deny that Plaintiff has suffered any harm or damage whatsoever as a
12 result of any conduct by, or attributable to these Defendants.

13 36. Answering Paragraph No. 36, Defendants admit that they were notified and
14 advised that Plaintiff had filed a charge with the California Department of Fair
15 Employment and Housing. Defendants admit that the DFEH issued a notice of case
16 closure and a right to sue notice on February 14, 2007 as the DFEH was unable to
17 conclude any violation of a statute. Except as so expressly admitted, Defendants deny
18 the remainder of the material allegations therein.

19 **PRAYER FOR RELIEF**

20 a. Answering Paragraph a of the Prayer for relief, Defendants deny that
21 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

22 b. Answering Paragraph b of the Prayer for relief, Defendants deny that
23 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

24 c. Answering Paragraph c of the Prayer for relief, Defendants deny that
25 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

26 d. Answering Paragraph d of the Prayer for relief, Defendants deny that
27 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

28 ///

1 e. Answering Paragraph e of the Prayer for relief, Defendants deny that
2 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

3 f. Answering Paragraph f of the Prayer for relief, Defendants deny that
4 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

5 g. Answering Paragraph g of the Prayer for relief, Defendants deny that
6 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

7 h. Answering Paragraph h of the Prayer for relief, Defendants deny that
8 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

9 i. Answering Paragraph i of the Prayer for relief, Defendants deny that
10 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

11 j. Answering Paragraph j of the Prayer for relief, Defendants deny that
12 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

13 k. Answering Paragraph k of the Prayer for relief, Defendants deny that
14 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

15 l. Answering Paragraph l of the Prayer for relief, Defendants deny that
16 Plaintiff is entitled to the requested relief, or any relief at all from these Defendants.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 1. As a first and separate affirmative defense, Defendants assert that neither
20 the Complaint nor any purported cause of action alleged therein states facts sufficient to
21 constitute a cause of action against them.

22 **SECOND AFFIRMATIVE DEFENSE**

23 2. As a second and separate affirmative defense, Plaintiff's causes of action
24 are barred in whole or in part to the extent that Plaintiff has failed to exhaust her
25 administrative remedies pursuant to California's Fair Employment and Housing Act and
26 California's Labor Code.

27 ///

28 ///

THIRD AFFIRMATIVE DEFENSE

3. As a third and separate affirmative defense, Defendants assert that to the extent that Plaintiff alleges or relies upon acts or omissions occurring more than one year before the filing of her complaint with the California Department of Fair Employment and Housing, if any, Plaintiff's claims based on such conduct are barred.

FOURTH AFFIRMATIVE DEFENSE

4. As a fourth separate and affirmative defense, Defendants assert that the alleged conduct of which Plaintiff complains was not based on her race or ethnicity, but was based on one or more legitimate, nondiscriminatory business reasons.

FIFTH AFFIRMATIVE DEFENSE

5. As a fifth and separate affirmative defense, Defendants allege that Plaintiff's cause of action for discrimination is barred, in whole or in part, because Defendants would have made the same employment decisions concerning Plaintiff absent any discriminatory motive.

SIXTH AFFIRMATIVE DEFENSE

6. As a sixth and separate affirmative defense, Plaintiff's causes of action are barred in whole or in part by the applicable statutes of limitation, including but not limited to Cal. Code of Civ. Proc. §§ 335.1 and 340, and applicable limitations periods under the California Labor Code, including but not limited to Cal. Lab. Code §§ 98.7 and 2699.3

SEVENTH AFFIRMATIVE DEFENSE

7. As a seventh and separate affirmative defense, Defendants allege that their actions about which Plaintiff complains were undertaken in good faith in compliance with applicable federal, state, administrative, and local laws and regulations governing Defendants operations.

EIGHTH AFFIRMATIVE DEFENSE

8. As an eighth and separate affirmative defense, Defendants allege on information and belief that Plaintiff has failed to make reasonable efforts to mitigate her damages, if any.

NINTH AFFIRMATIVE DEFENSE

9. As a ninth and separate affirmative defense, Defendants allege that Plaintiff's causes of action are barred by the equitable doctrines of laches and unclean hands.

TENTH AFFIRMATIVE DEFENSE

10. As a tenth and separate affirmative defense, Defendants allege that Plaintiff's causes of action are barred by the equitable doctrines of waiver and estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

11. As an eleventh and separate affirmative defense, Defendants assert that their actions and conduct toward Plaintiff were in good faith, and to the extent Plaintiff seeks exemplary or punitive damages for any purported acts of the Defendants, the Complaint, and each cause of action alleged therein, fails to state sufficient facts to justify an award of punitive damages, and that the Complaint and each cause of action therein, fails to state sufficient and specific facts to support the underlying allegations of malice and/or reckless indifference.

TWELFTH AFFIRMATIVE DEFENSE

12. As a twelfth and separate affirmative defense, Defendants assert that the alleged conduct of which Plaintiff complains was not based on her alleged disability, but was based on one or more legitimate, nondiscriminatory business reasons.

THIRTEENTH AFFIRMATIVE DEFENSE

13. As a thirteenth and separate affirmative defense, Defendants assert that they would have taken the same action with regard to Plaintiff even if she had not taken leave from her employment.

FOURTEENTH AFFIRMATIVE DEFENSE

14. As a fourteenth and separate affirmative defense, Defendants assert that Plaintiff would not otherwise have been employed by Defendants at the time Plaintiff alleges that she sought to return to work.

///

FIFTEENTH AFFIRMATIVE DEFENSE

15. As a fifteenth and separate affirmative defense, Defendants assert that they attempted in good faith to find a reasonable accommodation for Plaintiff, but Plaintiff failed to engage in the interactive process with Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

16. As a sixteenth and separate affirmative defense, Defendants assert that the accommodation allegedly sought by Plaintiff for her alleged disability would impose an undue hardship on Defendants and the operation of their business.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. As a seventeenth and separate affirmative defense, Defendants assert that Plaintiff, as a result of her alleged disability and/or medical condition, was unable to perform the essential duties of her position from which she was discharged.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. As an eighteenth and separate affirmative defense, Defendants assert that Plaintiff was not allowed to return to work for Defendants because there was no vacant position available for which Plaintiff was qualified.

NINETEENTH AFFIRMATIVE DEFENSE

19. As a nineteenth and separate affirmative defense, Defendants assert that that they offered Plaintiff a reasonable accommodation that Plaintiff refused to accept.

WHEREFORE, Defendants pray as follows:

1. That Plaintiff take nothing by this action;
2. That judgment be entered in Defendants' favor;
3. That Defendants recover their costs and attorneys' fees in this proceeding;

and

///

///

///

///

